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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

WILLAMETTE RIVERKEEPER, et al.,

Plaintiffs,

vs.

U.S. ARMY CORPS OF ENGINEERS, et al.,

Defendants.

Case No.: 6:17-cv-00801-MC

**STIPULATED VOLUNTARY
DISMISSAL**

The following stipulation (“Stipulation”) is entered into by and between Plaintiffs Willamette Riverkeeper and Conservation Angler (“Plaintiffs”) and Defendants the United States Army Corps of Engineers and Colonel Aaron Dorf, in his official capacity as Commander and District Engineer of the United States Army Corps of Engineers, Portland District (“Defendants”):

WHEREAS, Plaintiffs filed their Second Amended Complaint for Declaratory and Injunctive Relief in this action on June 20, 2018, alleging four claims for relief under the Endangered Species Act (“ESA”). ECF No. 30 at ¶¶ 47-50.

WHEREAS, the first claim alleges that the Corps unlawfully failed to reinitiate consultation with the National Marine Fisheries Service (“NMFS”) under Section 7(a) of the ESA as to effects of the Corps funding the summer steelhead and rainbow trout hatchery programs in the North and South Santiam River basins in Oregon on winter steelhead and winter steelhead critical habitat. *Id.* at ¶ 48. On April 9, 2018, the Corps reinitiated consultation with NMFS to evaluate the effects of the continued operation of the Willamette Valley Project, including the effects of the summer steelhead and rainbow trout hatchery programs in the North and South Santiam River basins. The reinitiated consultation on the effects of the hatchery programs in the North and South Santiam River basins was completed when NMFS issued a biological opinion to the Corps on May 17, 2019.

WHEREAS, the second claim alleges that the Corps made an irreversible or irretrievable commitment of resources in violation of Section 7(d) of the ESA by authorizing, funding, or facilitating the production and release of summer steelhead in the North and South Santiam River basins before completing the consultation on the hatchery programs. *Id.* at ¶ 49. The Corps ceased funding the production and release of hatchery summer steelhead in the South and North

Santiam River basins in 2017 and 2018, respectively. Additionally, the Corps issued a determination that its continued operation and maintenance of the Willamette Valley Project, including the hatchery program, would not violate Sections 7(a) or 7(d) of the ESA.

WHEREAS, the third claim alleges that the Corps has caused jeopardy to winter steelhead in violation of Section 7(a) of the ESA, because the agency did not submit a proposed hatchery and genetic management plan (“HGMP”) for summer steelhead to NMFS in accordance with a reasonable and prudent alternative in the 2008 biological opinion. *Id.* at ¶ 47. The Corps and other entities submitted summer steelhead and rainbow trout HGMPs to NMFS on June 14, 2018 and October 29, 2018, respectively. NMFS approved those HGMPs on May 21, 2019 and issued an ESA Section 4(d) letter for the Upper Willamette River spring Chinook salmon hatchery programs to the Corps and Oregon Department of Fish and Wildlife. The approved HGMP states: “The [Corps] does not fund summer steelhead production in the North or South Santiam Basin.”

WHEREAS, the final claim alleges that the Corps has unlawfully caused take of winter steelhead and spring Chinook salmon via the release of hatchery rainbow trout. *Id.* at ¶ 50. Defendants deny these allegations.

Given the developments in this case since its inception, Plaintiffs and Defendants hereby stipulate as follows¹:

¹ The parties recently agreed to file a joint status report proposing next steps for the case within 10 days of NMFS making its final determinations. Joint Status Report and Stipulation to Stay Case, ECF No. 45. Because the parties have agreed that all of Plaintiffs’ claims should be dismissed and are filing this stipulation of voluntary dismissal, the parties will not submit another joint status report to the Court.

1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties hereby stipulate to the voluntary dismissal of all claims in Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief. This dismissal shall be with prejudice.

2. Plaintiffs reserve their right to file a motion with the Court seeking attorneys' fees and costs pursuant to Section 11 of the ESA. Plaintiffs will separately file a motion with the Court requesting an extension of the time period set forth in Local Rule 54-1 from 14 days from the entry of judgment to 60 days from the entry of judgment, to pursue a settlement on attorneys' fees and costs. Defendants do not oppose such a motion.

3. This Stipulation does not represent an admission by any party to any fact, claim, or defense at issue in this lawsuit. This Stipulation has no precedential value.

4. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

Date: May 31, 2019.

Respectfully submitted,

/s/ Peter M.K. Frost
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